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SUPREME COURT, U.S.

IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1977

NO. 77-5781

ORIGINAL COPY

FRANK RAKAS AND LONNIE KING, PETITIONERS

-vs-

PEOPLE OF THE STATE OF ILLINOIS, RESPONDENT

REPLY BRIEF FOR THE PETITIONERS

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ARGUMENT

The Petitioners, in electing to file this reply brief, do so for the purpose of answering the second point in the Brief in Opposition filed by the Respondent (at pages 11-13). This point of Respondent was not anticipated in the original Petition for a Writ of Certiorari because it was assumed for the purposes of the Petition that the search of the automobile in which Petitioners were riding as passengers was unlawful (Petition, at page 4). Therefore, this reply will not repeat any argument previously made.

WHETHER OR NOT PETITIONERS PRESENTED A PRIMA FACIE CASE ON THE MERITS FOR SUPPRESSION OF EVIDENCE SEIZED BY POLICE DURING THE CONTESTED SEARCH IS NOT RELEVANT TO THE ISSUE BEFORE THIS COURT BECAUSE NO STATE COURT HAS YET RULED UPON THE LEGALITY OF THE SEARCH.

Obviously, Petitioners believe that their challenge to the warrantless police search of the automobile in which they were riding as passengers was meritorious, just as they believe that their presence at the time of the search was sufficient to confer standing. However, Petitioners do not see how the ultimate question as to the legality of the search has any relevance at this point because, unfortunately, the state courts declined to rule upon that question due to the view taken regarding Petitioners' standing. In effect, Petitioners are seeking an order by this Court which would require the state courts to decide the merits of Petitioners' challenge to the search. Of course, such a decision might be on the basis of either the United States Constitution or state law. Respondent, on the other hand, is now also seeking a decision on the merits, except it is asking this Court to make the determination as the reason for denial of the instant Petition for Writ of Certiorari. Suffice it to say, this Court need not address an issue which was not first decided by a lower court; and, indeed, it should not do so if state law as well as the federal constitution can be applied, c.f. Dorszynski v. United States, 418 U.S. 424, 94 S. Ct. 3042, 41 L. Ed. 2d 855 (1974) and California v. Krivda, 409 U.S. 33, 93 S. Ct. 32, 34 L. Ed. 2d 45 (1972).

Petitioners wish to make it quite clear that the only issue decided thus far by the state courts was the question of Petitioners' standing. First, the trial court suggested no other grounds for denial of Petitioner's Motion to Suppress when it erroneously ruled as follows:

> "THE COURT: Well, I believe the law says what counsel (prosecutor) says it says. These men (Petitioners) have nostanding to contest the validity of the search. It wasn't their car. They had no control over it. The only person that could complain would be the one who was driving it at the time or who owned the car. Motion to Suppress is denied." (A53)

Next, the Appellate Court of Illinois, although requested in Petitioners' brief to render a decision on the merits, adopted the limited reasoning of the trial court with this ruling:

> "Of the other issues raised by defendants several can be summarily decided. Firstly, defendants argue that the trial court erred in denying their motion to suppress evidence seized during an unlawful search of an automobile not belonging to either of the defendants but in which they were riding as passengers of a girlfriend. We conclude, as the trial court did, that the defendants lacked standing to complain of the allegedly unlawful search and seizure. "360 N.E. 2d 1252-1253(Appendix A of Petition).

Lastly, the Illinois Supreme Court refused to review this case without a statement of reasons (See Appendix C of Petition).

CONCLUSION

Under the circumstances, then, the second point in Respondent's Brief in Opposition is not only legally unsound, it is also unfair. The Respondent, having successfully obtained favorable decisions from the state courts predicated upon the narrow issue of Petitioners' standing, is now attempting to broaden the scope of the case before this Court because it appears advantageous for the Respondent to do so. To be sure, Petitioners are likewise desirous of a broader resolution, but they are aware that this must be done by state courts in the first instance.

Respectfully submitted,

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